Pesuruhjaya Bangunan Kawasan Pentadbiran Majlis Bandaraya Pulau Pinang v Perbadanan Pengurusan Mar Vista Resort

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P-01(A)-194–04 OF 2023
RAVINTHRAN, HASHIM HAMZAH JJCA AND FAIZAH JAMALUDIN, HCJ
1 OCTOBER 2024

Land Law — Strata Management Act 2013 ('the SMA') — Commissioner of buildings ('COB') — Whether COB had power to allow strata management bodies to adjourn their annual general meetings prescribed under the SMA — Whether COBs only had power to administer and implement provisions of the SMA as prescribed — Whether only State Authority had power to suspend operation of SMA or of any of its provisions and such power could not be delegated to COB or his deputies or other officers appointed under the SMA to administer and implement its provisions

The respondent management corporation ('MC') had sought the appellant's consent to postpone its annual general meeting ('AGM') for a period of 12 months for safety/security reasons as a fight had broken out when the AGM was convened. The appellant replied that it had no power under the Strata Management Act 2013 ('the SMA') to grant the postponement and directed the respondent to proceed with its AGM within a month. Dissatisfied, the respondent applied to the High Court for judicial review of the appellant's refusal to grant the postponement ('the decision'). The High Court held that the appellant's decision was invalid, not in accordance with the law and void. At the outset of the instant appeal against the High Court's decision, the respondent raised a preliminary objection that the appeal had become academic and should be dismissed as the AGM had already taken place before the appeal hearing. The sole issue in the instant appeal was a question of law of whether the Commissioner of Buildings ('COB') was empowered under the SMA to allow an adjournment of a strata scheme's AGM. The High Court's decision turned on its interpretation of two provisions of the SMA. One was s 1(7) which provided that 'The State Authority may, if in its opinion it would not be contrary to the public interest and the interest of the purchasers to do so, suspend the operation of this Act or any provision of this Act in any local authority area or any part of any local authority area or any other area for such period as it deems fit'. The other provision was s 4(1) which provided that 'The State Authority may, in respect of a local authority area or any other area, appoint a ... Commissioner of Buildings and such number of Deputy

Commissioners of Buildings and other officers as may be necessary for the purpose of administering and carrying out the provisions of this Act'. Reading the two said provisions together, the High Court concluded that: (a) the State Authority's power under s 1(7) included the provisions in the SMA relating to the holding of AGMs; (b) pursuant to s 4(1), the COB was the lawful delegate of the State Authority conferred with the power to administer and implement the provisions of the SMA including those relating to the holding of AGMs; and (c) the COB consequently had the power to not only adjourn the AGM of the MC but also to suspend the operation of the SMA or of any its provisions for such period as was deemed fit. The appellant argued that the High Court's interpretation was wrong as the power to suspend the operation of the SMA or of any its provisions was a non-delegable one vested solely in the State Authority and exercisable only by the State Authority if it was of the opinion that to do so was not contrary to the public interest and the interest of the purchasers. In particular, the exercise of that power could not be delegated to the COB or his deputies or other officers, more so because the SMA was a social legislation enacted for the protection of purchasers, proprietors and parcel owners of a subdivided building that was managed by a strata scheme.

Held, dismissing the preliminary objection, allowing the appeal and setting aside the High Court's decision:

(1) It was open to the court to hear the appeal even if there was no longer a lis between the parties. Given the importance of the question of law on the management of thousands of strata schemes all over Malaysia under the SMA and the fact that the High Court's decision would be binding on the subordinate courts and be persuasive authority on the High Court, there was good reason in the public interest for the court to hear this appeal and to address the question of whether or not Commissioners of Buildings ('COBs') like the appellant had power under the SMA to postpone or extend the time prescribed under the Second Schedule of the SMA for strata management bodies to hold their AGMs and also whether the COBs had power to suspend the operation of the SMA or of any of its provisions (see paras 21–22 & 24).

(2) The High Court in the instant case expressly found that the COB (the appellant) had power under s 1(7) of the SMA to suspend the operation of the SMA or of any of its provisions. This finding had far-reaching implications on all aspects of strata management under the SMA and was not limited only to the holding of AGMs by strata management bodies. Unless the High Court's decision was overturned, it would remain on record and serve as a precedent that COBs had the power not only to grant postponements of AGMs under the SMA but also to suspend the operation of the SMA or of any of its provisions (see para 23).

(3) The principal effect of ss 1(5), 1(6) and 1(7) of the SMA was to describe the State Authority's power to extend the application of any provision of the SMA to a non-local authority area, to suspend the operation of the Act or any of its provisions in any area or to exempt any part of a local authority area from any of the provisions of the SMA or any regulations made thereunder. Whereas, s 4(1) of the SMA empowered the State Authority to appoint a COB, Deputy COBs and other officers for the purpose of administering and carrying out the provisions of the Act. Based on applicable principles of statutory interpretation, the High Court erred in holding that s 1(7) read together with s 4(1) of the SMA empowered the COB to suspend any provision under the SMA including a management corporation's obligation to hold its AGM (see paras 63, 65 & 82).

(4) It was a stretch of the English language to ascribe to the words in ss 1(7) and 4(1) of the SMA, the meaning that the appellant could suspend the application of the SMA or of any of its provisions in any local authority area or any part of any local authority area or any other area for such period as he deemed fit. Such an interpretation would mean that pursuant to s 4(4) of the SMA, the COB's 'power' to suspend the Act or of any of its provisions could also be exercised by the Deputy COBs and all the officers appointed by the State Authority under s 4(1) of the Act (see para 83).

(5) The appellant's powers were limited to what was delegated to him by the State Authority, namely, to administer and implement the provisions of the SMA in the local authority area of the Majlis Bandaraya Pulau Pinang (see para 83).

(6) The State Authority's power to suspend the operation of the SMA or of any of its provisions was non-delegable and was only exercisable by the State Authority itself if it was of the opinion that to do so would not be contrary to the public interest and the interest of the purchasers. Nowhere in the SMA did it state that the State Authority could delegate to the COB its powers under s 1(7). The fact that the SMA was a piece of social legislation required the court to use the purposive approach to interpret the provisions of the Act to protect the interests of the public and of the purchasers of units in strata schemes governed by the SMA. Accordingly, the COB had no power under the SMA either to suspend the operation of the SMA or of any of its provisions or to allow a strata management body to adjourn its AGM (see paras 83 & 86).

[Bahasa Malaysia summary

Perbadanan pengurusan responden ('MC') telah meminta persetujuan perayu untuk menangguhkan mesyuarat agung tahunannya ('AGM') selama tempoh 12 bulan atas sebab keselamatan/sekuriti kerana pergaduhan telah tercetus

A semasa AGM diadakan. Perayu menjawab bahawa ia tidak mempunyai kuasa di bawah Akta Pengurusan Strata 2013 ('APS') untuk memberikan penangguhan tersebut dan mengarahkan responden meneruskan AGMnya dalam tempoh sebulan. Tidak berpuas hati, responden memohon kepada Mahkamah Tinggi untuk semakan kehakiman terhadap keengganan perayu B untuk memberikan penangguhan ('keputusan tersebut'). Mahkamah Tinggi memutuskan bahawa keputusan perayu adalah tidak sah, tidak mengikut undang-undang dan terbatal. Pada permulaan rayuan semasa terhadap keputusan Mahkamah Tinggi, responden membangkitkan bantahan awal bahawa rayuan itu telah menjadi akademik dan harus ditolak kerana AGM C telah pun diadakan sebelum pendengaran rayuan. Satu-satunya isu dalam rayuan semasa adalah persoalan undang-undang sama ada Pesuruhjaya Bangunan ('PB') diberi kuasa di bawah APS untuk membenarkan penangguhan AGM skim strata. Keputusan Mahkamah Tinggi menjurus kepada tafsirannya terhadap dua peruntukan APS. Satu adalah s 1(7) yang D memperuntukkan bahawa 'Pihak Berkuasa Negeri boleh, jika pada pendapatnya ia tidak akan berlawanan dengan kepentingan awam dan kepentingan pembeli untuk berbuat demikian, menggantung kuat kuasa Akta ini atau mana-mana peruntukan Akta ini di dalam mana-mana kawasan pihak E berkuasa tempatan atau mana-mana bahagian mana-mana kawasan pihak berkuasa tempatan atau mana-mana kawasan lain selama apa-apa tempoh yang difikirkannya patut'. Peruntukan lain adalah s 4(1) yang memperuntukkan bahawa 'Pihak Berkuasa Negeri boleh, berkenaan dengan sesuatu kawasan pihak berkuasa tempatan atau mana-mana kawasan lain, melantik seorang F pegawai yang hendaklah dikenali sebagai Pesuruhjaya Bangunan dan apa-apa bilangan Timbalan Pesuruhjaya Bangunan dan pegawai lain yang perlu bagi maksud mentadbirkan dan menjalankan peruntukan Akta ini'. Membaca kedua-dua peruntukan tersebut bersama-sama, Mahkamah Tinggi membuat kesimpulan bahawa: (a) kuasa Pihak Berkuasa Negeri di bawah s 1(7) termasuk G peruntukan dalam APS berkaitan dengan mengadakan AGM; (b) menurut s 4(1), COB adalah perwakilan sah Pihak Berkuasa Negeri yang diberi kuasa untuk mentadbir dan melaksanakan peruntukan APS termasuk yang berkaitan dengan mengadakan AGM; dan (c) PB seterusnya mempunyai kuasa untuk bukan sahaja menangguhkan AGM MC tetapi juga untuk menggantung H operasi APS atau mana-mana peruntukannya selama tempoh yang difikirkan sesuai. Perayu berhujah bahawa tafsiran Mahkamah Tinggi adalah salah kerana kuasa untuk menggantung operasi APS atau mana-mana peruntukannya adalah tidak boleh diwakilkan yang mana hak terletak sepenuhnya kepada Pihak Berkuasa Negeri dan hanya boleh dilaksanakan oleh Pihak Berkuasa I Negeri jika ia berpendapat. bahawa untuk berbuat demikian tidak bertentangan dengan kepentingan awam dan kepentingan pembeli. Khususnya, penggunaan kuasa itu tidak boleh diwakilkan kepada COB atau timbalannya atau pegawai lain, lebih-lebih lagi kerana APS adalah perundangan sosial yang digubal untuk melindungi pembeli, pemilik dan

pemilik petak bangunan yang dipecah bahagi yang diuruskan oleh satu skim strata.

Diputuskan, menolak bantahan awal, membenarkan rayuan dan mengetepikan keputusan Mahkamah Tinggi:

(1) Ia terbuka kepada mahkamah untuk mendengar rayuan itu walaupun tidak ada lagi lis antara pihak-pihak. Memandangkan kepentingan persoalan undang-undang mengenai pengurusan beribu-ribu skim strata di seluruh Malaysia di bawah APS dan fakta bahawa keputusan Mahkamah Tinggi akan mengikat mahkamah bawahan dan menjadi kuasa persuasif di Mahkamah Tinggi, terdapat alasan yang kukuh demi kepentingan awam bagi mahkamah mendengar rayuan ini dan untuk menangani persoalan sama ada Pesuruhjaya Bangunan ('PB') seperti perayu mempunyai kuasa di bawah APS untuk menangguhkan atau melanjutkan masa yang ditetapkan di bawah Jadual Kedua APS bagi badan pengurusan strata mengadakan AGM mereka dan juga sama ada PB mempunyai kuasa untuk menggantung operasi APS atau mana-mana peruntukannya (lihat perenggan 21–22 & 24).

(2) Mahkamah Tinggi dalam kes semasa mendapati PB (perayu) mempunyai kuasa di bawah s 1(7) APS untuk menggantung operasi APS atau mana-mana peruntukannya. Dapatan ini mempunyai implikasi yang meluas ke atas semua aspek pengurusan strata di bawah APS dan tidak terhad hanya kepada penyelenggaraan AGM oleh badan pengurusan strata. Melainkan keputusan Mahkamah Tinggi dibatalkan, ia akan kekal dalam rekod dan menjadi duluan bahawa PB mempunyai kuasa bukan sahaja untuk memberikan penangguhan AGM di bawah APS tetapi juga untuk menggantung operasi APS atau mana-mana peruntukannya (lihat perenggan 23).

(3) Kesan utama ss 1(5), 1(6) dan 1(7) APS adalah untuk menerangkan kuasa Pihak Berkuasa Negeri untuk melanjutkan pemakaian mana-mana peruntukan APS kepada kawasan bukan pihak berkuasa tempatan, untuk menggantung operasi Akta atau mana-mana peruntukannya di mana-mana kawasan atau untuk mengecualikan mana-mana bahagian kawasan pihak berkuasa tempatan daripada mana-mana peruntukan APS atau mana-mana peraturan yang dibuat di bawahnya. Manakala, s 4(1) APS memberi kuasa kepada Pihak Berkuasa Negeri untuk melantik PB, Timbalan PB dan pegawai lain bagi tujuan mentadbir dan melaksanakan peruntukan Akta. Berdasarkan prinsip tafsiran berkanun yang terpakai, Mahkamah Tinggi telah terkhilaf apabila memutuskan bahawa s 1(7) yang dibaca bersama s 4(1) APS memberi COB kuasa untuk menggantung mana-mana peruntukan di bawah APS termasuk kewajipan perbadanan pengurusan untuk mengadakan AGMnya (lihat perenggan 63, 65 & 82).

(4) Ia adalah sebahagian daripada bahasa Inggeris untuk menganggap perkataan dalam ss 1(7) dan 4(1) APS, yang bermaksud bahawa perayu boleh menggantung permohonan APS atau mana-mana peruntukannya dalam mana-mana kawasan pihak berkuasa tempatan atau mana-mana bahagian mana-mana kawasan pihak berkuasa tempatan atau mana-mana kawasan lain bagi tempoh yang difikirkannya patut. Tafsiran sedemikian bermakna menurut s 4(4) APS, 'kuasa' PB untuk menggantung Akta atau mana-mana peruntukannya juga boleh dilaksanakan oleh Timbalan PB dan semua pegawai yang dilantik oleh Pihak Berkuasa Negeri di bawah s 4(1) Akta (lihat perenggan 83).

(5) Kuasa perayu adalah terhad kepada apa yang diwakilkan kepadanya oleh Pihak Berkuasa Negeri, iaitu, untuk mentadbir dan melaksanakan peruntukan APS di kawasan pihak berkuasa tempatan Majlis Bandaraya Pulau Pinang (lihat perenggan 83).

(6) Kuasa Pihak Berkuasa Negeri untuk menggantung operasi APS atau mana-mana peruntukannya adalah tidak boleh diwakilkan dan hanya boleh dilaksanakan oleh Pihak Berkuasa Negeri sendiri jika ia berpendapat bahawa untuk berbuat demikian tidak akan bertentangan dengan kepentingan awam dan kepentingan pembeli. Tiada mana-mana dalam APS menyatakan bahawa Pihak Berkuasa Negeri boleh mewakilkan kepada PB kuasanya di bawah s 1(7). Fakta bahawa APS adalah sekeping perundangan sosial memerlukan mahkamah menggunakan pendekatan bertujuan untuk mentafsir peruntukan Akta untuk melindungi kepentingan awam dan pembeli unit dalam skim strata yang ditadbir oleh APS. Sehubungan itu, PB tidak mempunyai kuasa di bawah APS sama ada untuk menggantung operasi APS atau mana-mana peruntukannya atau membenarkan badan pengurusan strata bagi menangguhkan AGMnya (lihat perenggan 83 & 86).]

Cases referred to

AJS v JMH and another appeal [2022] 1 MLJ 778; [2022] 1 CLJ 331; [2022] 1 AMR 617, FC (refd)

Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and other appeals [2020] 1 MLJ 281; [2020] 1 CLJ 162, FC (refd)

Bar Council Malaysia v Tun Dato' Seri Arifin bin Zakaria & Ors (Persatuan Peguam-Peguam Muslim Malaysia, intervener) and another appeal [2020] 4 MLJ 773; [2018] 10 CLJ 129; [2018] AMEJ 1160, FC (refd)

Fadhil Husseiin Ishak Yassin bin Mansor v Public Islamic Bank Berhad & Anor [2024] MLJU 2216; [2024] CLJU 1901, CA (refd)

Innab Salil & Ors v Verve Suites Mont' Kiara Management Corp [2020] 12 MLJ 16; [2020] 10 CLJ 285, FC (refd)

Maple Amalgamated Sdn Bhd & Anor v Bank Pertanian Malaysia Bhd [2021] 6 MLJ 348; [2021] 8 CLJ 409, FC (refd)

Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor [2021] 1 MLJ 750; [2021] 2 CLJ 579; [2021] AMEJ 0046, FC (refd)

Perbadanan Pengurusan Anjung Hijau v Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur [2017] 11 MLJ 554; [2018] 7 CLJ 336; [2017] 4 AMR 254, HC (not folld)

Perbadanan Pengurusan Mar Vista Resort v Pesuruhjaya Bangunan Kawasan Pentadbiran Majlis Bandaraya Pulau Pinang (Ravindra Kumar a/l Jaganathan & Ors, interveners) [2023] MLJU 1343; [2023] CLJU 1196; [2023] AMEJ 1197, HC (refd)

Perbadanan Pengurusan Sunrise Garden Kondominium v Sunway City (Penang) Sdn Bhd & Ors and another appeal [2023] 2 MLJ 621; [2023] 2 CLJ 333, FC (refd)

PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and other appeals [2021] 2 MLJ 60; [2021] 2 CLJ 441; [2021] 3 AMR 449, FC (refd)

R v Secretary of State for Environment, Transport and the Regions ex p Spath Holme Ltd [2001] 2 AC 349, HL (refd)

R v Secretary of State for the Home Department ex p Salem [1999] 1 AC 450, HL (refd)

Robinder Singh Jaj a/l Bijir Singh v Jasminder Kaur a/p Bhajan Singh [2024] 2 MLJ 126; [2024] 3 CLJ 647; [2024] 2 AMR 481, FC (refd)

Tan Sri Musa Hj Aman v Tun Datuk Seri Hj Panglima Hj Juhar Hj Mahiruddin & Anor and another application [2020] 12 MLJ 121; [2020] 9 CLJ 44; [2021] 1 AMR 321, FC (refd)

Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased) [2020] 4 MLJ 721; [2020] 7 CLJ 561; [2020] 5 AMR 579, FC (refd)

Tenaga Nasional Bhd v Tan Sooi Lek @ Tan Choon Guan & Ors [2022] 4 MLJ 236; [2022] 6 CLJ 177; [2022] AMR 938, FC (refd)

Tetap Tiara Sdn Bhd v Pengurusan Perbadanan Jaya One & Ors and other appeals [2024] 2 MLJ 853; [2023] CLJU 2648, CA (folld)

Yong Tshu Khin & Anor v Dahan Cipta Sdn Bhd & Anor and other appeals [2021] 1 MLJ 478, FC (refd)

Legislation referred to

Building and Common Property (Maintenance and Management) Act 2007 (repealed by Strata Management Act 2013)

Divorce and Matrimonial Proceedings Rules 1980

Housing Development (Control and Licensing) Act 1966 sub-s 24(2)(e)

Interpretation Acts 1948 and 1967 ss 3, 13, 15, 16, 17A

Law Reform (Marriage and Divorce) Act 1976

Strata Management Act 2013 ss 1(5), 1(6), 1(7), 2, 3, 4(1), (3), (4), 56, 56(1), (2), 59(2), 62, Schedule 2, para 10, 10(1)

Strata Titles Act 1985 s 4

Town and Country Planning Act 1976

Appeal from: *Perbadanan Pengurusan Mar Vista Resort v Pesuruhjaya Bangunan Kawasan Pentadbiran Majlis Bandaraya Pulau Pinang (Ravindra Kumar a/l Jaganathan & Ors, interveners)* [2023] MLJU 1343 (High Court, Pulau Pinang)

Christina Siew Chee Wa (with Lee Sze Ting) (Lim Kean Siew & Co) for the appellant.
Lim Sing Ghee (with Yeoh Soo Chuin) (Yeoh Soo Chuin & Co) for the respondent.

Faizah Jamaludin J:

INTRODUCTION

[1] This is an appeal by the Pesuruhjaya Bangunan Kawasan Pentadbiran Majlis Bandaraya Pulau Pinang, who is Commissioner of Buildings for the local authority area under the jurisdiction of Majlis Bandaraya Pulau Pinang ('appellant'/'MBPP-COB') against part of the order issued by the Pulau Pinang High Court on 3 April 2023 ('the order') in judicial review application No PA-25–39–08 of 2022.

[2] The respondent is Perbadanan Pengurusan Mar Vista Resort. It is the management corporation of a subdivided building known as the Mar Vista Resort ('respondent'/'Mar Vista MC'): it was formed under the Strata Titles Act 1985 (Act 318) ('the STA 1985'). The Mar Vista MC was the applicant in the judicial review proceeding before the Pulau Pinang High Court.

[3] The appellant is appealing against paras (b) and (c) of the order, where the High Court declared that the decisions made by the appellant in his letters dated 7 June 2022 ('impugned decision No 1') and 30 June 2022 ('impugned decision No 2') are invalid, not in accordance with the law and void. Paragraphs (b) and (c) of the order are reproduced below:

> b) Satu deklarasi bahawa keputusan Responden melalui suratnya bertarikh 07.06.2022 yang menyatakan bahawa tiada sebarang peruntukan dalam Akta Pengurusan Strata 2013 yang memberi kuasa kepada Responden untuk memberikan penangguhan kepada Mesyuarat Agung Tahunan adalah tidak sah, tidak menurut undang-undang dan terbatal;
>
> c) Satu deklarasi bahawa keputusan Responden melalui suratnya bertarikh 30.06.2022 yang menyatakan bahawa tiada sebarang peruntukan dalam Akta Pengurusan Strata 2013 yang memberi kuasa kepada Responden untuk memberikan penangguhan kepada Mesyuarat Agung Tahunan adalah tidak sah, tidak menurut undang-undang dan terbatal;

Impugned decision No 1

[4] On 1 June 2022, the respondent wrote to the appellant requesting a postponement of its eighth annual general meeting ('AGM') for a period of 12 months because a fight had broken out during the eighth AGM on 22 May 2022.

[5] In impugned decision No 1, the appellant informed the respondent that he is unable to grant the respondent's application for an extension of time to convene its AGM because there are no provisions in the Strata Management Act 2013 ('the SMA 2013'), which empowers the COB to allow for the postponement of general meetings. The appellant ordered the respondent to call for its AGM within one month from the date of the letter. Paragraphs 3, 4, and 5 of impugned decision No 1 are reproduced below:

> 3. Untuk makluman, tiada sebarang peruntukan pada Akta Pengurusan Strata 2013 (Akta 757) yang memberikan kuasa kepada pihak Pesuruhjaya Bangunan untuk memberikan penangguhan kepada mesyuarat agung. Oleh itu, pihak kami tidak dapat memberikan sebarang penangguhan kepada mana-mana mesyuarat agung.
>
> 4. Sehubungan itu, pihak tuan hendaklah mengadakan mesyuarat agung tahunan sebagaimana yang telah dinyatakan pada Perenggan 10 Jadual Kedua Akta 757. Kegagalan mengadakan mesyuarat agung tahunan boleh diambil tindakan mengikut Peraturan 34(2) pada Peraturan-Peraturan Pengurusan Strata (Penyenggaraan dan Pengurusan) 2015.
>
> 5. Oleh yang demikian, pihak tuan diarahkan untuk memanggil Mesyuarat Agung Tahunan dalam tempoh satu (1) bulan dari tarikh surat ini.

Impugned decision No 2

[6] In a follow-up letter dated 22 June 2022, the respondent repeated its request for an adjournment of its eighth AGM to the appellant for reasons of safety.

[7] In the appellant's reply in impugned decision No 2, the appellant refused to adjourn the respondent's eighth AGM for the same reasons stated in its impugned decision No 1, namely, that he does not have the power to do so under the SMA 2013. He ordered the respondent call for its AGM within one month from the date of the letter. Paragraphs 3, 4, and 5 of impugned decision No 2 are worded exactly the same as paragraphs in impugned decision No 1 (reproduced in para [5] above).

[8] The appellant gave the same reason for impugned decision No 2, as he did for impugned decision No 1 — namely, that there is nothing in the SMA 2013 that empowers the COB to allow for the deferments of general meetings.

This appeal

[9] This appeal against paras (b) and (c) of the High Court's order turns on the following question of law:

> Is the Commissioner of Buildings empowered under the provisions of the Strata Management Act 2013 to allow an adjournment of a strata scheme's AGM?

PRELIMINARY OBJECTION

[10] The respondent raised a preliminary objection against this appeal on the grounds that the substratum of this appeal, namely, the holding of its eighth AGM, no longer exists since it had held its eighth AGM in May 2023; thus, rendering this appeal academic.

[11] Learned counsel for the respondent submitted that for this reason, this appeal should be dismissed. He cited the case of *Bar Council Malaysia v Tun Dato' Seri Arifin bin Zakaria & Ors (Persatuan Peguam-Peguam Muslim Malaysia, intervener) and another appeal* [2020] 4 MLJ 773; [2018] 10 CLJ 129; [2018] AMEJ 1160 (FC) ('Bar Council'), where the Federal Court held 'it is not the function of the courts to decide hypothetical questions which do not impact on the parties before them'.

[12] He also cited the Federal Court's decision in *Tenaga Nasional Bhd v Tan Sooi Lek @ Tan Choon Guan & Ors* [2022] 4 MLJ 236; [2022] 6 CLJ 177; [2022] AMR 938 ('TNB v Tan Sooi Lek'), where the primary question before the Federal Court was whether the inter partes hearing of the injunction application by TNB became academic due to TNB having carried out and completed the maintenance and repair works at the land. Both the High Court and the Court of Appeal held that the application was academic because the works had already been carried out. The Federal Court held the fact that TNB had carried out the necessary works on the land did not render the inter partes hearing of the application academic.

[13] Learned counsel for the respondent in his written submission only quoted para 41 of the Federal Court's judgment in *TNB v Tan Sooi Lek*, where the court had set out the general rule on when an issue may be rendered academic. He used this quotation to support the respondent's argument that this present appeal is rendered academic because the respondent had held its eighth AGM prior to the hearing of the appeal. Regrettably, counsel omitted to bring to this court's attention to paras 42 and 43 of the judgment, where the Federal Court held the fact that TNB had carried out the works did not render the inter partes application academic.

[14] In *Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor* [2021] 1 MLJ 750; [2021] 2 CLJ 579; [2021] AMEJ 0046 ('Maria Chin'), the appellant — Maria Chin Abdullah — filed a judicial review to challenge the travel ban

imposed on her by the first respondent. The travel ban was lifted before her appeal was heard at the Federal Court. The respondents raised a preliminary objection that the appeal was rendered academic as the travel ban had been lifted. The Federal Court dismissed the preliminary objection and proceeded to hear the appeal on its merits. Similar to this present appeal, the respondents in that case cited the *Bar Council*'s case to support their argument that the appellate courts do not entertain academic or hypothetical issues. The Federal Court disagreed. It distinguished the *Bar Council*'s case from the *Maria Chin*'s case and held that the question in the appeal was of sufficient public importance to satisfy the *Salem* exception. Tengku Maimun Tuan Mat CJ said:

> [392] On the judgment of this court in *Bar Council Malaysia v Tun Dato' Seri Arifin bin Zakaria & Ors (Persatuan Peguam-Peguam Muslim Malaysia, intervener) and another appeal* [2020] 4 MLJ 773; [2018] 10 CLJ 129 ('Bar Council'), which was relied upon by the respondents for the proposition that the Federal Court does not entertain academic and hypothetical appeals, with respect, it was our considered view that the judgment did not advance the respondents' case very far.
>
> [393] The facts in Bar Council were materially different. The matter was a reference under s 84 of the Courts of Judicature Act 1964 ('the CJA 1964') and was thus to be decided by the Federal Court on the merits for the first time. By the time the Federal Court assembled to pronounce judgment, the relevant judges whose appointments were in dispute had left the Bench rendering the issue of their appointments ipso facto academic. *The present case is materially different because the High Court upheld the travel ban. There is therefore in this case a valid lis live for adjudication*.
>
> [394] Further, this court in *Bar Council* accepted the observations of Lord Slynn of Hadley in *R v Secretary of State for the Home Department ex p Salem* [1999] 1 AC 450 ('Salem') that courts should not usually hear 'academic' cases 'unless there is a good reason in the public interest for doing so' (*Salem*, p 457). *This, in the court's words, is the 'Salem exception' to the rule disfavouring the hearing of academic cases*.
>
> [395] It will be noticed that the *Salem* exception is in accord with the language of s 96(a) of the CJA 1964 whereby leave to appeal to the Federal Court shall be granted, inter alia, on 'a question of importance upon which further argument and a decision of the Federal Court would be to public advantage'. The points of law in this case are not novel (the other limb of s 96(a) of the CJA 1964), neither do they singularly concern constitutional points (s 96(b) of the CJA 1964). It follows that in granting leave, the leave panel viewed the case as having public importance, and accordingly, that it satisfied the *Salem* exception. (Emphasis added.)

[15] What is the '*Salem* exception'? It is an exception to the general rule that courts do not usually hear academic or hypothetical cases propounded by the House of Lords in *R v Secretary of State for the Home Department ex p Salem* [1999] 1 AC 450 ('Salem'). The House of Lords held that in a cause where there is an issue involving a public authority as to a question of public law, courts have the discretion to hear the appeal, even if by the time the appeal reaches the court there is no longer a *lis* to be decided, which directly affected

A the rights and obligation of the parties *inter se*.

[16] The 'Salem exception' was similarly recognised and applied by the Federal Court in *Tan Sri Musa Hj Aman v Tun Datuk Seri Hj Panglima Hj Juhar Hj Mahiruddin & Anor and another application* [2020] 12 MLJ 121; [2020] 9 CLJ 44; [2021] 1 AMR 321 ('Tan Sri Musa Aman v Tun Juhar Mahiruddin') and *Robinder Singh Jaj a/l Bijir Singh v Jasminder Kaur a/p Bhajan Singh* [2024] 2 MLJ 126; [2024] 3 CLJ 647; [2024] 2 AMR 481.

[17] The case of *Tan Sri Musa Aman v Tun Juhar Mahiruddin*, related to the tussle between Tan Sri Musa Aman and Datuk Seri Shafie Apdal for the post of Chief Minister of Sabah after the 14th General Election. The Court of Appeal held that the appeal had become academic because the Sabah State Legislative Assembly had been dissolved prior to the hearing of the appeal. The Federal Court in its majority decision, disagreed: it allowed the appellant's leave application. Abdul Rahman Sebli FCJ (as he then was) said:

> [24] What is clear from ex parte *Salem* is that an appellate court is not precluded from hearing appeals that have become academic, subject of course to the caveat that the discretion must be exercised with caution, and not merely because it is in the public interest to do so. *The House of Lords made it clear that the court will exercise the discretion if there is a good reason in the public interest for doing so and 'where it was likely that the issue would have to be resolved in the near future because a large number of similar cases existed or were anticipated'*.
>
> [25] In the present case there is, in our view, every reason in the public interest to hear the merits of Tan Sri Musa's appeal instead of casting it aside as being academic. *It is public knowledge that this is not the first time that the people of Sabah had to face this kind of political turmoil and constitutional crisis, and it will not be the last if not finally resolved by this court*. (Emphasis added.)

[18] The question of law before the Federal Court in *Robinder Singh Jaj Bijir Singh v Jasminder Kaur Bhajan Singh* was whether the cause papers filed under the Law Reform (Marriage and Divorce) Act 1976 read with the Divorce and Matrimonial Proceedings Rules 1980 may be filed in the English language without an accompanying translation in the National language.

[19] The respondent in that case argued that because the petition for judicial separation had been withdrawn prior to the appeal and the parties had obtained a decree nisi prior to the hearing of the appeal, the Federal Court does not have the jurisdiction to hear the appeal as the matter was academic — there was no longer any *lis* pending in the courts below. The Federal Court disagreed and proceeded to hear the substantive appeal. Mary Lim FCJ delivering the judgment of the court said:

> [4] We disagreed. Although the general principle is that the court does not answer

academic questions (see *Bar Council Malaysia v Tun Dato' Seri Arifin bin Zakaria & Ors (Persatuan Peguam-Peguam Muslim Malaysia, intervener) and another appeal* [2020] 4 MLJ 773; [2018] 10 CLJ 129, applying *Sun Life Assurance Co Of Canada v Jervis* [1944] AC 111 and *Ainsbury v Millington* [1987] 1 All ER 929), there are exceptions. In *R v Secretary Of State For The Home Department, Ex Parte Salem* [1999] AC 450, the House of Lords explained that it will exercise its discretion to hear the appeal on a question of public law, even though by the time of the appeal, there was no longer an issue which will directly affect the rights and obligations of the parties concerned in the appeal.

[5] Two instances of such exception are illustrated in *Kerajaan Malaysia v Mudek Sdn Bhd* [2017] 10 CLJ 158 and *Spind Malaysia Sdn Bhd v Justrade Marketing Sdn Bhd & Anor* [2018] 4 MLJ 34; [2018] 4 CLJ 705. In *Mudek*, the parties had reached an amicable settlement with each other before the appeal was heard. *Yet, the Federal Court proceeded to hear the appeal, troubled with the majority decision of the Court of Appeal which, 'would remain on record, and unless dealt with, would cause confusion to parties and legal advisers alike as it does not reflect the correct position of the law'*.

[6] Care and caution must, of course, be exercised when considering whether a given set of circumstances warrant the exercise of this sparingly used discretion. In this regard, we found that in order to deal with the questions of law for which leave had already been granted, a detailed consideration of facts will not be required. *More importantly and even more critically, we take judicial notice of the fact that there is a substantial number of matrimonial proceedings not only pending but are anticipated to be filed in the courts below. For those cases, the decision of the Court of Appeal on the application of the Registrar's Circular will apply by virtue of the doctrine of stare decisis*. (Emphasis added.)

[20] There is only one question before us in this present appeal; namely, whether the COB, a public body, is empowered under the SMA 2013 to allow a postponement of a strata scheme's AGM. This is purely a question of law concerning the interpretation of the SMA 2013. A detailed consideration of the facts is not required in this appeal.

[21] As explained by the House of Lords in ex parte *Salem* and applied with approval by our Federal Court in the cases cited above, a court may hear appeals, even if there is no longer any *lis* between the parties,

... if there is good reason in the public interest in doing so, eg where there was a discrete point of statutory construction not involving detailed consideration of the facts and where it was likely the issue would have to be resolved in the near future because of a large number of similar cases existed or were anticipated.

[22] This court takes judicial notice there are numerous strata schemes in Malaysia under the SMA 2013, and that all these schemes are required to hold their AGMs within the time prescribed in the Second Schedule of the SMA 2013. Hence, the COBs for all local authority areas throughout Malaysia are

faced with the similar issue of whether or not they are empowered under the SMA 2013 to postpone and/or extend the time for the holding of AGMs by these strata schemes, be it joint management bodies, management corporations or subsidiary management corporations.

[23] Furthermore, the learned High Court judge in his written judgment had expressly found that the power 'to suspend the operation of the Act or any provisions of the Act' under s 1(7) SMA 2013 is also conferred on the COB. The High Court's findings have far-reaching implications on all aspects of strata management under the SMA 2013 — not limited only to the holding of AGMs by strata schemes. The High Court's judgment is reported in *Perbadanan Pengurusan Mar Vista Resort v Pesuruhjaya Bangunan Kawasan Pentadbiran Majlis Bandaraya Pulau Pinang (Ravindra Kumar a/l Jaganathan & Ors, interveners)* [2023] MLJU 1343; [2023] CLJU 1196; [2023] AMEJ 1197. Under the doctrine of stare decisis, the judgment — unless overturned by a higher court — will remain on record and serve as precedent that COBs have the power not only to grant the postponement of AGMs under the SMA 2013 but also to suspend the operation of the Act and any provisions thereunder.

[24] In the circumstances, given the importance of the question of law on the management of thousands of strata schemes all over Malaysia under the SMA 2013 and the fact that the High Court's decision will be binding authority on the subordinate courts and persuasive authority on the High Court, we are of the view that there is good reason in the public interest for this court to hear this appeal and to address the question of whether or not the COB has the power to suspend the operation of the SMA 2013 or any of the provisions thereunder.

Issue: Is the COB empowered under the SMA 2013 to suspend the Act and any of the provisions under the Act?

[25] The learned High Court judge in his written judgment stated that the State Authority's power under s 1(7) of the SMA 2013 to suspend the operation of the SMA 2013 or any provision under the Act, includes the provisions relating to the holding of AGMs. His Lordship held that pursuant to s 4(1) of the SMA 2013, the COB is the lawful delegate of the State Authority and has been conferred by the State Authority with the powers of administering the SMA 2013, including the provisions relating to the holding of AGMs. He concluded that the COB therefore, by virtue of s 1(7) of the SMA 2013 has the power to adjourn the eighth AGM of Mar Vista MC. The relevant paragraphs of the High Court's judgment are reproduced below:

> 41. I interpret this to mean that the State Authority can appoint the COB to administer the provisions of the SMA 2013, and confer on the COB the powers to

do so. Such conferment of the powers to administer the provision of the SMA 2013 on the COB, in my view, would include the provisions relating to the holding of general meetings by a management corporation.

42. My view is fortified by s 4(3) of the SMA 2013 which states that the COB is in charge of the administration of the SMA 2013. Further, that the COB may exercise the powers conferred upon him under the SMA 2013.

...

46. My interpretation of the above-mentioned provisions of the SMA 2013 is this. Pursuant to s 4(1) of the SMA 2013, the respondent is the lawful delegate of the State Authority. The respondent has been conferred the powers of administering the SMA 2013. By virtue of s 1(7) of the SMA 2013, the respondent has the requisite power to suspend the operation of any provision of the SMA 2013. That would include the provisions of the SMA 2013 pertaining to the holdings of the general meetings of a management corporation.

...

49. The respondent argued that the power prescribed under s 1(7) of the SMA 2017 is vested specifically in the State Authority, and such power is not delegable to the COB. That argument is untenable, when s 4(1) of the SMA 2013 has stated otherwise.

The appellant's position

[26] The appellant's position is that the there are no provisions in the SMA 2013, which empower a COB to allow a postponement of a strata scheme's AGM. Therefore, it could not allow the respondent's application for a postponement of its eighth AGM.

[27] Learned counsel for the appellant submits that the power to 'suspend the operations of this Act of any provision of this Act' under s 1(7) of the SMA 2013 ('power to suspend') is vested specifically in the State Authority and not the COB. The power to suspend can only be exercised by the State Authority and not the COB. If Parliament had intended the COB to have powers to suspend, then it would have expressly provided for such power in the Act itself. She argues that the State Authority's power to suspend cannot be delegated to the COB.

[28] She contends that s 4(1) of the SMA 2013 cannot be interpreted to allow a delegation of the State Authority's specific powers to the COB nor can such delegation be implied or inferred from the section. This is more so since the SMA 2013 is a social legislation passed to facilitate the affairs of strata living for the good of the community and/or owners of strata titles.

[29] Counsel for the appellant further argues that the State Authority's power to suspend is not an unfettered power to be exercised in a 'robotic'

manner. The provisions of s 1(7) of the SMA 2013 stipulates that the power to suspend should be exercised only if the State Authority forms the opinion that 'it would not be contrary to the public interest and the interest of the purchasers'. Therefore, in the absence of clear provisions to the contrary, Parliament intended for the State Authority to apply its own mind to the matter and not to delegate the responsibility to the COB.

[30] To support the appellant's position, learned counsel cited the Federal Court's decisions in *Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and other appeals* [2020] 1 MLJ 281; [2020] 1 CLJ 162; [2019] 8 AMR 297; *Perbadanan Pengurusan Sunrise Garden Kondominium v Sunway City (Penang) Sdn Bhd & Ors and another appeal* [2023] 2 MLJ 621; [2023] 2 CLJ 333; [2023] 2 AMR 313 and *Innab Salil & Ors v Verve Suites Mont' Kiara Management Corp* [2020] 12 MLJ 16; [2020] 10 CLJ 285.

[31] Additionally, the appellant contends that the learned High Court judge had erroneously relied on the High Court case of *Perbadanan Pengurusan Anjung Hijau v Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur* [2017] 11 MLJ 554; [2018] 7 CLJ 336; [2017] 4 AMR 254 ('Anjung Hijau') to support his decision that s 1(7) of the SMA 2013 empowers the COB to allow an adjournment of AGMs. The High Court in *Anjung Hijau* had held that pursuant to s 1(7) of the SMA 2017 that the COB has the power to suspend the operation of the Act.

[32] We agree with counsel for the appellant. The High Court's decision in *Anjung Hijau* had been overturned by the Court of Appeal on 9 November 2017. This is evident from the judgments of this court in *Tetap Tiara Sdn Bhd v Pengurusan Perbadanan Jaya One & Ors and other appeals* [2024] 2 MLJ 853; [2023] CLJU 2648 (CA) ('Tetap Tiara') and in *Fadhil Husseiin Ishak Yassin bin Mansor v Public Islamic Bank Berhad & Anor* [2024] MLJU 2216; [2024] CLJU 1901 (CA) ('Fadhil Husseiin').

[33] In *Tetap Tiara*, this court said:

> [38] Learned counsel for the first defendant also refers to the High Court's decision in *Perbadanan Pengurusan Anjung Hijau v Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur* [2017] 11 MLJ 554; [2017] CLJU 730 (*Anjung Hijau*'s case) which held that even if a statutory provision is mandatory, the court may still be able to extend time under para 8 of the Schedule of the CJA. *The first defendant can no longer rely on Anjung Hijau's case because its decision had been reversed by the Court of Appeal vide order dated 9 November 2017. This clearly shows the opposite that no such power or jurisdiction exists*. (Emphasis added.)

[34] And in *Fadhil Hussein*, this court said:

[59] Next is the High Court's decision in *Perbadanan Pengurusan Anjung Hijau v Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur* [2017] 11 MLJ 554; [2018] 7 CLJ 336 (HC)('Anjung Hijau') which the Bidder and the Bank rely upon for the proposition that even if a statutory provision is mandatory, the court may still be able to extend time under para 8 of the Schedule of the Courts of Judicature Act 1964. However, *the High Court's decision in Anjung Hijau was reversed by the Court of Appeal on 9 November 2017 in Civil Appeal No W-02(NCVC)(A)-1221–07 of 2017 (Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur lwn Perbadanan Pengurusan Anjung Hijau). As such, the High Court's decision may not be relied upon at all.* (Emphasis added.)

The respondent's position

[35] The respondent's position is that the High Court judge correctly recognised the State Authority's power to suspend the operation of the SMA 2013, as vested in s 1(7) of the SMA 2013, can be lawfully exercised by COB as the State Authority's appointed delegate. Learned counsel for the respondent submitted that this interpretation is consistent with the legislative intent of the SMA 2013 as a social legislation.

ANALYSIS

[36] The issue at the heart of this appeal is the statutory interpretation of the SMA 2013.

[37] Thus, in considering whether the High Court judge had correctly interpreted the SMA 2013 when he held that the COB has the power to suspend operation of the SMA 2013, including the requirement for a management corporation to hold its AGM, this court must first consider the principles of statutory interpretation, both at common law and under the Interpretation Acts 1948 and 1967 ('the Interpretation Acts').

Common law canons of statutory interpretation

[38] What is statutory interpretation? The authors of the go-to book on statutory interpretation — *Cross: Statutory Interpretation* (3rd Ed) (1995) — state that it is the process of giving meaning to the words used in legislation. Lord Bingham in *R v Secretary of State for Environment, Transport and the Regions ex p Spath Holme Ltd* [2001] 2 AC 349 (HL) at 388D said that in interpreting any statute 'the overriding aim of the court must always be to give effect to the intention of Parliament as expressed in the words used'. Lord Neuberger, the former President of the UK Supreme Court, in his forward to the book *Understanding Legislation: A Practical Guide to Statutory Interpretation*, (2018) said:

> More generally, statutory construction, like any exercise in documentary interpretation, has always involved considering both the language and the context. ... Nonetheless, *the words are where one has to start and, in my view, they remain the bedrock on which any questions of statutory interpretation must rest*. (Emphasis added.)

[39] The common law canons of statutory interpretation acknowledged and applied by courts in Malaysia are the literal rule, the golden rule, the mischief rule, and the purposive rule.

[40] The approach taken by our courts to statutory interpretation can be seen in *Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)* [2020] 4 MLJ 721; [2020] 7 CLJ 561; [2020] 5 AMR 579 ('Tebin Mostapa'), where the Federal Court painstakingly analysed the judicial application of these principles of statutory interpretation in several of its judgments over the recent years.

[41] The Federal Court in *Tebin Mostapa* concluded that courts will first use the literal rule, ie, apply the ordinary meaning of the statute if the words are plain and unambiguous, and only use the purposive approach where the words are not clear. Vernon Ong FCJ delivering the judgment of the Federal Court said:

> [30] In our opinion, the rules governing statutory interpretation may be summarised as follows. *First, in construing a statute, effect must be given to the object and intent of the Legislature in enacting the statute*. Accordingly, the duty of the court is limited to interpreting the words used by the Legislature and to give effect to the words used by it. The court will not read words into a statute unless clear reason for it is to be found in the statute itself. *Therefore, in construing any statute, the court will look at the words in the statute and apply the plain and ordinary meaning of the words in the statute. Second, if, however the words employed are not clear, then the court may adopt the purposive approach in construing the meaning of the words used*. Section 17A of the Interpretation Acts 1948 and 1967 provides for a purposive approach in the interpretation of statutes. *Therefore, where the words of a statute are unambiguous, plain and clear, they must be given their natural and ordinary meaning. The statute should be construed as a whole and the words used in a section must be given their plain grammatical meaning. It is not the province of the court to add or subtract any word; the duty of the court is limited to interpreting the words used by the Legislature and it has no power to fill in the gaps disclosed*. Even if the words in a statute may be ambiguous, the power and duty of the court 'to travel outside them on a voyage of discovery are strictly limited'. *Third, the relevant provisions of an enactment must be read in accordance with the legislative purpose and applies especially where the literal meaning is clear and reflects the purposes of the enactment*. This is done by reference to the words used in the provision; where it becomes necessary to consider every word in each section and give its widest significance. *An interpretation which would advance the object and purpose of the enactment must be the prime consideration of the court, so as to give full meaning and effect to it in the achievement to the declared objective*. As

such, in taking a purposive approach, the court is prepared to look at much extraneous materials that bears on the background against which the legislation was enacted. It follows that a statute has to be read in the correct context and that as such the court is permitted to read additional words into a statutory provision where clear reasons for doing so are to be found in the statute itself. (Emphasis added.)

[42] The Federal Court in its majority judgment in *AJS v JMH and another appeal* [2022] 1 MLJ 778; [2022] 1 CLJ 331; [2022] 1 AMR 617 ('AJS v JMH') referred with approval to the principles of statutory interpretation summarised in *Tebin Mostapa*. Tengku Maimun Tuan Mat CJ reiterated that in interpreting statutes, courts should begin with the literal rule and that the purposive approach be used only when there is ambiguity in the words of the statute.

[43] There is, however, a difference in approach taken by the courts in the interpretation of social legislation. The Federal Court in *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and other appeals* [2021] 2 MLJ 60; [2021] 2 CLJ 441; [2021] 3 AMR 449 ('PJD Regency') laid down the principles for the interpretation of social legislation. Tengku Maimun Tuan Mat CJ said:

[36] From the above, we would summarise the principles on the interpretation of social legislation as follows:

(a) statutory interpretation usually begins with the literal rule. However, and without being too prescriptive, where the provision under construction is ambiguous, the courts will determine the meaning of the provision by resorting to other methods of construction foremost of which is the purposive rule (see the judgment of this court in *All Malayan Estates Staff Union v Rajasegaran & Ors* [2006] 6 MLJ 97; [2006] 4 CLJ 195);

(b) *the literal rule is automatically displaced by the purposive rule when it concerns the interpretation of the protective language of social legislation*; and

(c) for the avoidance of doubt, it is important to emphasise that even where a term or provision of a social legislation or a statutory contract enacted thereunder is literally clear or unambiguous, *the court no less shoulders the obligation to ensure that the said term or provision is interpreted in a way which ensures maximum protection of the class in whose favour the social legislation was enacted*. (Emphasis added.)

[44] Accordingly, the applicable common law principles of statutory interpretation distilled from the aforementioned Federal Court decisions can be summarised as follows:

(a) in construing a statute, courts must first apply the literal rule: see *Tebin Mostapa*, *AJS v JMH*;

(b) in applying the literal rule:

(i) effect must be given to the object and intent of Parliament in enacting the statute;

(ii) the relevant provisions of a statute must be read in accordance with the legislative purpose: the literal rule applies especially where the literal meaning is clear and reflects the purposes of the enactment;

(iii) the duty of courts is limited to interpreting the words used by Parliament and to give effect to the words used by Parliament;

(iv) the primary consideration for courts is to interpret legislation in a manner that advances the object and purpose of the enactment, so as to give full meaning and effect to the enactment in achieving its declared objective;

(v) the statute should be construed as a whole and the words used in a section must be given their plain grammatical meaning;

(vi) where the words of a statute are unambiguous, plain and clear, they must be given their natural and ordinary meaning. Courts will look at the words in the statute and apply the plain and ordinary meaning of the words in the statute;

(vii) it is not the province of courts to add or subtract any word. Courts will not read words into a statute unless a clear reason for it is to be found in the statute itself;

(viii) the duty of courts is limited to interpreting the words used by Parliament and it has no power to fill in the gaps disclosed; and

(ix) even if the words in a statute may be ambiguous, the power and duty of courts 'to travel outside them on a voyage of discovery are strictly limited'.

(c) courts may adopt the purposive approach in construing the meaning of the words used, if the words in the statutes are ambiguous or not clear, or where a literal reading of the provision bears two or more meanings: see *Yong Tshu Khin & Anor v Dahan Cipta Sdn Bhd & Anor and other appeals* [2021] 1 MLJ 478 (FC);

(d) courts shall adopt the purposive approach in interpreting the protective language of social legislation. Even where a term or provision of a social legislation is clear or unambiguous, courts have to ensure that the said term or provision is interpreted in a way that ensures maximum protection of the class in whose favour the social legislation was enacted: see *PJD Regency*;

(e) when using the purposive approach, regard must be had for the purpose of the statute as outlined in s 17A of the Interpretation Acts; and

(f) in taking a purposive approach, a statute has to be read in the correct context. Courts may look at extraneous materials that bears on the background against which the legislation was enacted. Hansard and Parliamentary speeches may be referred to as interpretive aid: see *Maple Amalgamated Sdn Bhd & Anor v Bank Pertanian Malaysia Bhd* [2021] 6 MLJ 348; [2021] 8 CLJ 409 where the Federal Court per Tengku Maimum Tuan Mat CJ held:

> [53] We are aware that the Hansard is not a definitive *corpus* on the law. The speeches are relevant in terms of statutory construction when the courts are required to ascertain the meaning of the words used in statutes. The courts retain the obligation to construe an Act of Parliament based on the language employed by applying settled canons of construction but they are by no means bound by what Parliamentarians say what the law means if the actual language of the statute is broader or narrower than the intent expressed or implied in the process of passing that statute. It could therefore be said that the Hansard is merely the starting point on interpretation and not the end-goal.

Requirements for statutory interpretation under the Interpretation Acts

[45] In interpreting statutes, apart from using the aforementioned common law principles of statutory interpretation, courts must also comply with the requirements of statutory interpretation under the Interpretation Acts.

[46] Pursuant to s 15 of the Interpretation Acts, the long title and preamble and every schedule to an Act shall be construed and have effect as part of the Act. Section 15 reads:

> The long title and preamble and every schedule (together with any note or table annexed to the schedules) to an Act or to any subsidiary legislation shall be construed and have effect as part of the Act or subsidiary legislation.

[47] Section 17A of the Interpretation Acts requires that regard be had to the purpose of the Act. It reads:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[48] However, as discussed above, this regard to the purpose of the Act has been interpreted by the Federal Court as being secondary to the literal rule. It is only if the words in the provision of the statute are ambiguous or unclear, or in interpreting the protective language of social legislation can courts use the purposive approach as provided in s 17A of the Interpretation Acts to interpret a statute.

A **[49]** Courts are required under s 16 of the Interpretation Acts to take notice of the division into parts or chapters of an Act. Section 16 reads:

> Where an Act or subsidiary legislation is divided into parts or chapters or otherwise, the fact and particulars of the division shall, without express mention thereof in the Act or subsidiary legislation, be taken notice of in all courts and for all purposes whatsoever.

B

Interpretation of the SMA 2013

C **[50]** Having listed the applicable principles of statutory interpretation, we will now proceed to interpret the SMA 2013 using these principles.

[51] The SMA 2013 is a public Act. Section 13 of the Interpretation Acts provides that every Act shall be a public Act unless the contrary is expressly D provided therein. There is nothing in the SMA 2013 that expressly provides to the contrary.

[52] The long title and preamble to the SMA 2013 describes the purpose of the Act as:

E

> An Act to provide for the proper maintenance and management of buildings and common property, and for related matters.

[53] The SMA 2013 is an Act of Parliament that came into force in the State F of Penang on 12 June 2015. The terms 'Act' or 'Act of Parliament' used with reference to legislation are defined in s 3 of the Interpretation Acts as 'law made by Parliament'. This court takes judicial notice that the SMA 2013 was drafted after much consultation with the relevant stakeholders with the stated intention of solving the many problems with the earlier Building and Common G Property (Maintenance and Management) Act 2007 (Act 663) ('the BCPA 2007'). The BCPA was repealed by the SMA 2013.

[54] Section 3 of the SMA 2013 requires that the SMA 2013 shall be read and construed with the STA 1985 and the subsidiary legislation made under H the STA 1985 in so far as they are not inconsistent with the provisions of the SMA 2013, or the regulations made by the SMA 2013. Section 3 of the SMA 2013 reads:

> This Act shall be read and construed with the Strata Titles Act 1985 and the subsidiary legislation made under that Act in so far as they are not inconsistent with I the provisions of this Act or the regulations made under this Act.

[55] As mentioned above, s 16 of the Interpretation Acts requires that notice be taken of the division into parts or chapters of an Act or subsidiary legislation 'in all Courts and for all purpose whatsoever'. Accordingly, this court in

interpreting the SMA 2013 must take notice of the facts and particulars of the division.

[56] The SMA 2013 is divided into the following parts and chapters:

PART I	PRELIMINARY	
PART II	ADMINISTRATION OF THE ACT	
PART III	DEALINGS IN BUILDING OR LAND INTENDED FOR SUBDIVISION INTO PARCELS	
PART IV	STRATA MANAGEMENT BEFORE THE EXISTENCE OF MANAGEMENT CORPORATION	
	Chapter 1	General
	Chapter 2	Management by developer before joint management body is established
	Chapter 3	Management by joint management body
	Chapter 4	Miscellaneous provisions applicable to this Part
	Chapter 5	Transitional and saving provisions due to the repeal of the Building and Common Property (Maintenance and Management) Act 2007
PART V	STRATA MANAGEMENT AFTER THE EXISTENCE OF MANAGEMENT CORPORATION	
	Chapter 1	General
	Chapter 2	Management by developer before first annual general meeting of management corporation
	Chapter 3	Management by developer after first annual general meeting of management corporation

	Chapter 4	Subsidiary management corporation and limited common property
	Chapter 5	Miscellaneous provisions applicable to this Part
	Chapter 6	Transitional and saving provisions due to consequential amendments to the Strata Title Act 1983
PART VI	MANAGING AGENT	
PART VII	DEPOSIT TO RECTIFY DEFECTS	
PART VIII	INSURANCES	
PART IX	DISPUTES AND STRATA MANAGEMENT TRIBUNAL	
	Chapter 1	General
	Chapter 2	Establishment and organisation
	Chapter 3	Jurisdiction of Tribunal
	Chapter 4	Conduct of proceedings
	Chapter 5	Awards of Tribunal
	Chapter 6	Miscellaneous provisions appliable to this Part
PART X	ENFORCEMENT	
PART XI	MISCELLANEOUS	
FIRST SCHEDULE		
SECOND SCHEDULE		
THIRD SCHEDULE		
FOURTH SCHEDULE		

[57] The term 'State Authority' in respect of Penang is not defined in the SMA 2013. Only the 'State Authority' for the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya is defined, which is the Minister responsible for these Federal Territories.

[58] Section 1(7) of SMA 2013 is in Part I of the Act. Part I is the Preliminary part of the Act that provides for the short title, application, and commencement of the Act. Section 1(7) of the SMA 2013 reads:

> (7) The State Authority may, if in its opinion it would not be contrary to the public interest and the interest of the purchasers to do so, suspend the operation of this Act

or any provision of this Act in any local authority area or any part of any local authority area or any other area for such period as it deems fit. A

[59] One of the common law canons of statutory interpretation listed in para [44] above is that a statute has to be considered as a whole and the words given its plain and ordinary meaning. B

[60] Based on the plain and ordinary meaning of the words in s 1(5) of the SMA 2013, the State Authority may *extend* any of the provisions of the Act to any area in the State, which is not under any local authority area, and that it makes such necessary modifications, amendments or variations for the purpose of application of the Act to such areas. C

[61] Under s 1(6) of the Act, the State Authority may *exempt* any part of the local authority area from any provisions of the Act, or any regulations made under the Act. D

[62] And under s 1(7) of the Act, the State Authority may — 'if in its opinion it would not be contrary to the public interest and the interest of the purchasers to do so' — *suspend* the operation of the Act or any provision of the Act in any local authority area or any part of such area for such period as the State Authority deems fit. E

[63] The principal effect of the provisions in ss 1(5), 1(6), and 1(7) of Part I, which is the Preliminary part of the SMA 2013, is to describe the power of the State Authority to extend the application of any of the provisions of the Act to a non-local authority area; to suspend the operation of the Act or any provisions thereunder in any area; or to exempt from any part of a local authority area from any of provisions of the Act or any regulations made thereunder. F G

[64] The principal effect of the provisions in ss 1(5), 1(6), and 1(7) is to describe the State Authority's power in extending, suspending and/or exempting the provisions of the Act. H

[65] Whereas s 4(1) is in Part II Administration of the Act. Section 4(1) empowers the State Authority to appoint a COB, Deputy COBs, and other officers for the purposes of administering and carrying out the Act. Section 4(1) of the SMA 2013 reads: I

(1) The State Authority may, in respect of a local authority area or any other area, appoint an officer to be known as the Commissioner of Buildings and such number of Deputy Commissioners of Buildings and other officers as may be necessary for the purpose of administering and carrying out the provisions of this Act.

[66] Part II relates to the Administration of the Act: namely, the appointment of the COB, the Deputy COBs and officers for purposes of administering and carrying out the provisions of the Act, and their powers and duties.

[67] Section 4(3) of the Act states that the COB is in charge of the administration of the Act and that may under the Act perform such duties imposed on him and exercise such powers as are conferred on him under the Act or any other written law. Section 4(4) provides that subject to any directions of the COB that are not inconsistent with the provisions of the Act, any powers conferred on, and the duties of the COB may be exercised or performed by the Deputy COBs and officers appointed by the State Authority under s 4(1) of the Act.

[68] Section 56 of the SMA 2013 form part of the operative components of the Act. Section 56 is in Chapter 3 of Part V of the SMA 2013: it governs 'Strata Management after the Existence of Management Corporation'. Section 56 contains the law requiring a management corporation to elect a management committee to perform the managements corporation's duties and to conduct the management corporation's business on its behalf. It reads:

> (1) Subject to subsection 63(4), the management corporation shall elect a management committee which, subject to any restriction imposed or direction given by the management corporation at a general meeting, shall perform the management corporation's duties and conduct the management corporation's business on its behalf, and may for that purpose exercise any of the management corporation's powers.
>
> (2) The provisions of the Second Schedule shall apply to the management corporation and the management committee.

[69] Section 56(2) states that the Second Schedule of the Act applies to the management corporation and management committee.

[70] The Second Schedule contains all the provisions governing management corporation and management committee. The requirement for a management corporation to hold AGMs is in para 10 of the Second Schedule of the Act, which reads:

> 10 Annual general meeting
>
> (1) The management corporation shall hold an annual general meeting for the consideration of accounts, election of the management committee and the transaction of such other matters as may arise.
>
> (2) The first annual general meeting shall be held within one month after the expiry of the initial period and the subsequent annual general meetings

shall be held once in each year, provided that not more than fifteen months shall lapse between the date of one annual general meeting and the next.

(3) The holding of any annual general meeting out of time in breach of this paragraph shall not affect the validity of the annual general meeting.

[71] Counsel for the respondent submits that since the SMA 2013 is a social legislation, this court must use a liberal approach in interpreting the Act. With respect to counsel, his submission is at odds with the principles of interpretation of social legislation promulgated by the Federal Court in *PJD Regency*. In *PJD Regency*, the learned Chief Justice stated that courts must use the purposive approach in 'the interpretation of the protective language of social legislation' and that courts 'shoulders the obligation to ensure that the said term or provision is interpreted in a way which ensures maximum protection of the class in whose favour the social legislation was enacted'.

[72] Who are class in whose favour the SMA 2013 was enacted? They are the purchasers, proprietors, and parcel owners of the subdivided building managed by the management corporation. In this present appeal, this class of persons are the purchasers, proprietors, and parcel owners of the units in the Mar Vista Resort. 'Purchaser', 'proprietor' and 'parcel owner' are defined in s 2 of the SMA 2013 as follows:

'purchaser' means the purchaser of a parcel and includes any person or body who has acquired an interest as a purchaser in the parcel or any person or body for the time being registered as a parcel owner in the register of parcel owners under subsection 30(1)

'parcel owner' means the purchaser or the developer in respect of those parcels in the development area which have not been sold by the developer.

'proprietor' has the meaning assigned to it in section 4 of the Strata Titles Act 1985

[73] The meaning assigned to 'proprietor' in s 4 of the STA 1985 is as follows:

'proprietor' refers to a parcel proprietor, that is to say, a person or body for the time being registered as the proprietor of a parcel, as well as to the proprietor of a provisional block, that is to say, a person or body for the time being registered as the proprietor of a provisional block unless expressly provided otherwise

[74] Therefore, in interpreting the SMA 2013, this court must do so in a manner that ensures maximum protection of the purchasers, proprietors, and parcel owners of the units in the Mar Vista Resort.

[75] The provisions in s 56(2) and para 10 of the Second Schedule of the SMA 2013, impose on the respondent — the Mar Vista MC — to hold its AGM not more than 15 months between the date of one AGM and the next.

A **[76]** The purpose of holding the AGM as stipulated in para 10(1) of the Second Schedule of the SMA 2013, is 'for the consideration of accounts, election of the management committee and the transaction of such other matters as may arise'.

B **[77]** The consideration of the accounts of the management corporation is essential for the protection of the purchasers, proprietors, and parcel owners since the management corporation has wide powers under s 59 of the SMA 2013 to collect maintenance charges and contributions to the sinking fund, and to spend the monies collected.

C

[78] Section 59(2) expressly states that the management corporation has the power to collect the maintenance charges and contribution to the sinking fund; authorise expenditure for the maintenance and management of the building and common property; recover from any parcel owner any monies expended by the management corporation in respect of the owner's parcel; to purchase, hire or otherwise acquire movable property for the common property; and employ or secure the services of persons to undertake the maintenance and management of the common property.

D

E

[79] Moreover, the management corporation has a duty under ss 60 and 61 of the SMA 2013 to maintain a maintenance account and a sinking fund account in its name in a bank or financial institution. Additionally, it is required under s 62 to ensure that the accounts be audited annually by an approved company auditor.

F

[80] The AGM is also where the management committee is elected. Section 56(1) of the SMA 2013 requires the management corporation to elect a management committee 'which, subject to any restriction imposed or direction given by the management corporation at a general meeting', shall perform the management corporation's duties and conduct its business on its behalf.

G

H **[81]** The AGM is an avenue provided by the SMA 2013 where the persons that the Act seeks to protect, ie the purchasers, proprietors, and parcel owners, to demand accountability from the management corporation. It allows them to ensure that the management corporation and the management committee in exercising the powers of the management corporation, has performed its duties, conducted its business, managed the building and common property, collected the charges and contributions and spent the monies, and maintained proper accounts, in accordance with the SMA 2013 and the regulations made thereunder, as well as the directions given to the management corporation at the previous AGMs.

I

FINDINGS

[82] Accordingly, pursuant to the applicable principles of statutory interpretation, this court finds that the learned High Court judge fell into error in holding that, based on the wordings in s 1(7) read with s 4(1) of the SMA 2013, the COB has the power to suspend any provision under the SMA 2013, including a management corporation's obligation to hold its AGM.

[83] The reasons for our findings are as follows:

(a) s 4(1) of the SMA 2013 expressly states that the State Authority 'may in respect of a local authority area or any other area', appoint a COB, Deputy COB and other officers 'as may be necessary for the purpose of administering and carrying out the provisions of this Act'. The State Authority's power to appoint the COB, Deputy COBs, and other officers are in respect of a local authority area or any other area. In this present appeal, the appellant was appointed as the COB for the local authority area of Majlis Bandaraya Pulau Pinang;

(b) in our opinion, it is a stretch of the English language to assign to the words in ss 1(7) and 4(1) of the SMA 2013, the meaning that the COB appointed for the local authority area of Majlis Bandaraya Pulau Pinang may under the Act, suspend the application of the SMA 2017 or any provisions of the Act, in any local authority area or any part of any local authority area or any other area for such period he deems fit. Furthermore, taken to its logical conclusion, such an interpretation would mean that pursuant to s 4(4) of the Act, the COB's 'power' to suspend the Act or its provisions may also be exercised or performed by all the Deputy COBs and all the officers appointed by the State Authority under s 4(1) of the Act;

(c) the appellant was appointed under s 4(1) of the SMA 2013 by the State Authority for the purpose of administering and carrying out the provisions of the Act in the local authority area of Majlis Bandaraya Pulau Pinang. Accordingly, the appellant's powers are limited to what was delegated to him by the State Authority, namely, administering and implementing the provisions of the SMA 2013 in the local authority area of Majlis Bandaraya Pulau Pinang;

(d) crucially, pursuant to the express words in s 1(7) of the SMA 2013, the State Authority may only exercise the power to suspend the operation of the Act or any provision thereunder 'if in its opinion it would not be contrary to the public interest and the interest of the purchasers to do so';

(e) this requirement in s 1(7) of the Act for the State Authority to form an opinion is personal to holder: it is non-delegable. Nowhere in the SMA 2013, does it state that the State Authority may delegate to the COB the

express requirement in s 1(7) of the Act that the State Authority form the opinion that the suspension of the operation of the Act in any local authority area or area 'will not be contrary to public interests and the interest of the purchasers';

(f) it is a cardinal principle of statutory interpretation that courts should not add words to statutes, where there are none. In construing a statute, the duty of the court is limited to interpreting the words used by Parliament in the Act and to giving effect to the said words;

(g) furthermore, as held by the Federal Court in *PJD Regency*, since the SMA 2013 is a piece of social legislation, this court must use the purposive approach to interpret the protective provisions of the Act. The requirement in s 1(7) of the SMA 2017 that the State Authority may only suspend the operation of the Act in any area if 'in its opinion it would not be contrary to the public interest and the interest of the purchasers to do so' is a protective provision in the Act. The purpose of the provision is to protect the interests of the public and the purchasers of the units in subdivided buildings in the strata schemes governed by the SMA 2013;

(h) we find that it is not in line with the purpose of the Act if courts were to interpret s 1(7) of the SMA 2017 to mean that the requirement for the State Authority, to form an opinion that the suspension of the Act would not be contrary to public interest and the purchasers' interest, can be delegated to the COB appointed under s 4(1) of the Act;

(i) the Federal Court in *Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and other appeals* [2020] 1 MLJ 281; [2020] 1 CLJ 162 held that having regard to the object and purpose of the Housing Development (Control and Licensing) Act 1966 ('the HDA 1966') — another piece of social legislation — the words 'to regulate and to prohibit' in sub-s 24(2)(e) of the HDA 1966 should be given a strict construction: the Minister is expected to apply his own mind to the matter and not to delegate that responsibility to the controller;

(j) similarly, the Federal Court in *Perbadanan Pengurusan Sunrise Garden Kondominium v Sunway City (Penang) Sdn Bhd & Ors and another appeal* [2023] 2 MLJ 621; [2023] 2 CLJ 333 at para 178 of its judgment, held that the State planning committee, who were entrusted to exercise a discretionary power under an Act (in that case the Town and Country Planning Act 1976), 'cannot, in purported exercise of such power, relinquish its power to be exercised by another body such as the local authority';

(k) thus, the State Authority is required to apply its own mind to form the opinion required in s 1(7) of the SMA 2017 and not delegate to the COB, who pursuant to s 4(4) of the Act can further delegate it to all the

Deputy COBs and officers appointed under s 4(1) of the Act; and

(l) accordingly, as the State Authority cannot delegate its power to form its opinion that the suspension of the operation of the SMA 2017 in any area would not be contrary to public interest and the interest of the purchasers, it follows, therefore, that the State Authority cannot delegate to the COB its power to suspend the operation of the SMA 2013 or any provision of the Act in any local authority area, any part of any local authority area or any other area.

[84] Our finding is in line with this court's decision *Tetap Tiara* where we held in para 39 of the judgment that there is no express provision in the SMA 2013 that allows the postponement of a strata scheme's AGM or extraordinary general meeting.

[85] We further find that the learned judge had fallen into error by relying on High Court's decision in *Anjung Hijau* to arrive at the conclusion that based on s 1(7) of the SMA 2013, the COB has the power to suspend the Act. This is because the decision in *Anjung Hijau* had been overturned by the Court of Appeal in 2017.

[86] Therefore, in the circumstances, we find that the COB does not have the power under the SMA 2013 to suspend the operation of the Act or any provision of the Act and to allow for the adjournment of a strata scheme's AGM.

DECISION

[87] For these reasons, we are satisfied that the learned High Court judge fell into error when he interpreted the SMA 2013 to mean that the COB has the power under the Act to suspend the operation of the Act and to allow the postponement of the respondent's eighth AGM. This warrants us to disturb his decision with respect to impugned decision No 1 and impugned decision No 2.

[88] Therefore, we unanimously allow the appeal. We further order that paras (b) and (c) of the High Court's order dated 3 April 2023 be set aside.

[89] We award costs in the sum of RM10,000 to the appellant, subject to allocatur.

A *Preliminary objection dismissed; appeal allowed and High Court's decision set aside.*

Reported by Ashok Kumar

B

C

D

E

F

G

H

I